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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

COUTINHO & FERROSTAAL  
INCORPORATED, a Delaware Corp.,

Plaintiff,

vs.

NEXCOIL INC., a California Corp. and  
DOES 1-10, inclusive,

Defendants.

Case No. CV09-9244 GHK (JCx)

**PROTECTIVE ORDER**

***FOR DISCOVERY AND  
DISCOVERY RELATED ISSUES  
ONLY.***

**[CHANGES MADE BY COURT]**

Having reviewed the parties' Stipulation regarding confidentiality and for entry of this Order, and finding good cause therefore, it is hereby ORDERED that this Order shall govern the handling of documents, depositions, deposition exhibits, interrogatory responses, admissions, and any other information produced, given, or exchanged by and among the parties and any non-parties to this action in connection with discovery in the litigation thereof.

1           1.     As used in this Order, the term “CONFIDENTIAL” means documents and  
2 other information produced in the course of discovery in this action that are designated  
3 as “CONFIDENTIAL” or “Trade Secret” pursuant to the terms of this Order. The term  
4 “documents” as used herein shall be interpreted broadly to encompass hard-copy and  
5 imaged documents as well as electronically stored information (“ESI”) of any type.  
6 This Order is applicable to all forms of discovery, including but not limited to,  
7 deposition testimony, answers to interrogatories, documents produced in response to  
8 requests for production, responses to requests for admissions, and any documents  
9 recorded on computer disks, the parties may designate any such materials as  
10 “CONFIDENTIAL” under the terms of this stipulated order.

11           2.     The parties to this action may designate as “CONFIDENTIAL” or “Trade  
12 Secret,” pursuant to the terms of this Order, documents or other discovery material to  
13 the extent they include, concern, involve or consist of patented or confidential research,  
14 development, testing, analysis or experimentation; competitive, proprietary, or  
15 commercial information; financial information, information relating to ownership,  
16 structure, operation or control of any non-public company; board minutes and internal  
17 communication dealing with or related to business strategy; licensing and sublicensing  
18 information related to business operation of parties; and any information protected  
19 from disclosure by any privacy law or other government regulation, as well as any  
20 other type of information given confidential status by the court. Any failure to  
21 designate a document “Trade Secret” shall not waive trade secret protection for any  
22 document otherwise designated “CONFIDENTIAL” pursuant to this Protective Order,  
23 and shall not waive or preclude any future “Trade Secret” designation.

24           3.     The parties have represented: This action involves sensitive proprietary  
25 information which would not be otherwise disclosed or made available to the public.  
26 The information at issue in this case is confidential. They wish to keep this  
27 information protected and confidential. Should the information become public, it  
28 could adversely affect the value of the information and the interest held by other

1 parties in connection with this information. The groups of documents and the basis for  
2 their confidentiality are set out in paragraph 5 of this Order. Categories of documents  
3 set out in paragraph 5 are a good faith attempt to provide the court with specificity of  
4 documents which the parties seek to protect.

5 Nothing in paragraph 5 shall prevent any party from designating a document as  
6 “CONFIDENTIAL” if the party believes in good faith that the document is entitled to  
7 such designation.

8 4. By designating a document, thing, material, testimony or other  
9 information derived therefrom as “CONFIDENTIAL,” under the terms of this order,  
10 the party making the designation is certifying to the Court that there is a good faith  
11 basis both in law and in fact for the designation within the meaning of Rule 26(g) of  
12 the Federal Rules of Civil Procedure.

13 5. The parties represent that they specifically seek protection under this  
14 Order for the following documents and for the following reasons:

15 (a) Confidential analysis reports. These reports were marked  
16 “Confidential” at the inception of the report and prior to the commencement of this  
17 action. The parties represent that if the information in these reports is not protected, it  
18 will prejudicially affect parties’ unique and valuable industry information.

19 (b) Licensing Agreements. The parties represent that the contents of the  
20 licensing agreement goes to the heart of the structural business model of parties  
21 involved and that disclosure of these agreements would harm the parties by disclosing  
22 private financial data to the public.

23 (c) Analytical data. The parties represent that disclosure of the  
24 analytical data dealing with products involved in this action will provide unfair  
25 advantage to any competitor who may seek to take advantage of the confidential  
26 analysis and data which took several years to develop.

27 (d) Internal Corporate Documents. The parties represent that  
28 documents reflecting corporate procedures, board minutes, entity structure and

1 formation will contain highly sensitive commercial, financial and private information.  
2 The parties to this action are not public companies, therefore, the parties represent that  
3 unprotected disclosure of these documents will harm the plaintiffs and defendants by  
4 disclosing private and financial data to the public.

5 (e) Work performed specifically under contract. This action will  
6 require production of documents reflecting work performed by one party on behalf of  
7 another party in exchange for compensation. All parties involved assigned a financial  
8 value to the work performed and information gained as a result. The parties represent  
9 that disclosing such information would give an unfair advantage to party's competitor  
10 who did not pay for this work to be performed on its behalf.

11 (f) Patented, trademarked and/or copy-written information. The parties  
12 represent that information which will be disclosed as part of the discovery in this  
13 action is patented, copy-written and proprietary information which should be offered  
14 the protection afforded by the revisions incorporated in the Copyright Act of 1976,  
15 Patent Act of 1977, American Inventors Protection Act of 1999 (AIPA), The Copyright  
16 Royalty and Distribution Reform Act of 2004, and The Digital Millennium Copyright  
17 Act of 1998.

18 6. Material or information designated as "CONFIDENTIAL" pursuant to  
19 this Order ("Confidential Material") shall be used by any recipients solely for the  
20 purpose of conducting this litigation, and not for any other purpose whatsoever, and  
21 such information shall not be disclosed to anyone except as provided herein. No expert  
22 or consultant shall review or gain access to Confidential Material unless he or she has  
23 executed the Certification Regarding Protective Order Regarding Confidential  
24 Information (attached as Exhibit A) ("Certification").

25 **Designation of Confidential Material**

26 7. The producing party may designate documents containing confidential or  
27 trade secret information as described herein as Confidential Discovery Material by  
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1 stamping or otherwise clearly marking the document as “CONFIDENTIAL” or “Trade  
2 Secret” in such a manner that will not interfere with legibility or audibility.

3 8. The designation of information or material as “CONFIDENTIAL” for  
4 purposes of this Order shall be made in the following manner by the party or nonparty  
5 seeking protection:

6 (a) In the case of documents, exhibits, briefs, memoranda,  
7 interrogatory responses, responses to requests for admission, or other materials (apart  
8 from depositions or other pretrial testimony): by affixing a plainly visible  
9 confidentiality designation legend, stating either “CONFIDENTIAL” or “This  
10 Document Contains Material Designated as Confidential Pursuant to the Protective  
11 Order Entered in this Case”, to (i) the cover page of such document, or on the outside  
12 of any media for storing electronic documents, and (ii) each page containing any  
13 confidential information or material, at the time such documents are produced or such  
14 information is disclosed, or as soon thereafter as the party or nonparty seeking  
15 protection becomes aware of the confidential nature of the information or material  
16 disclosed and sought to be protected hereunder. Whoever seeks designation of a  
17 native-format computer file as Confidential Material shall, to avoid altering the  
18 original file, not affix a label to the electronic file itself, but shall inform the receiving  
19 party in writing of the designation.

20 (b) In the case of depositions or other pretrial testimony: (i) by a  
21 statement on the record, by counsel, during such deposition or other pretrial proceeding  
22 that the entire transcript or a portion thereof shall be designated hereunder; or (ii) by  
23 written notice of such designation sent by counsel to all parties within ten (10) days  
24 after the delivery to counsel of the transcript of the deposition. At or before a  
25 deposition, the deponent or his counsel, or any other counsel of record, acting in good  
26 faith, may invoke the provisions of this Order in a timely manner, giving adequate  
27 warning to counsel for the party or nonparty that testimony about to be given is  
28 deemed protected under this Order. The parties may modify this procedure for any

1 particular deposition or proceeding through agreement on the record at such deposition  
2 or proceeding or otherwise by written stipulation, without approval of the Court. If  
3 any document or information designated under this Order is used during the course of a  
4 deposition, that portion of the deposition record reflecting such confidential  
5 information shall be sealed and stamped accordingly, and access thereto shall be  
6 limited pursuant to the other terms of this Order.

7 (c) A party or nonparty furnishing documents and things to another  
8 party shall have the option to require that all or batches of documents and things be  
9 treated as confidential during inspection and to make its designations of particular  
10 documents and things at the time copies of documents and things are produced or  
11 furnished.

12 9. Documents and information produced by a third party shall be treated as  
13 Confidential Discovery Material for thirty (30) calendar days after production, to allow  
14 the parties to review and assess the documents and information for confidentiality and  
15 designation under this Order.

16 10. Any documents and information produced by nonparties, pursuant to  
17 subpoena or otherwise may be designated "CONFIDENTIAL" pursuant to the terms of  
18 this Order by any party or nonparty.

19 **Disclosure and Use of Confidential Material**

20 11. Confidential Material under this Order, or copies or extracts therefrom  
21 and compilations thereof, may be disclosed, described, characterized, or otherwise  
22 communicated or made available in whole or in part only to the following persons:

23 (a) Outside counsel for any party to this litigation and staff and  
24 supporting personnel of such attorneys, such as paralegals, secretaries, stenographic  
25 and clerical employees and contractors, and outside copying, imaging and presentation  
26 services, who are working on this litigation under the direction of such attorneys and to  
27 whom it is necessary that the materials be disclosed for purposes of this litigation;  
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1 (b) In-house counsel for the parties herein who are necessary for the  
2 furtherance of this litigation and in-house paralegals;

3 (c) A named party in this litigation, or an officer, director, or employee  
4 of a named party deemed necessary by counsel to aid in the prosecution, defense, or  
5 settlement of this action;

6 (d) Subject to Paragraphs 12 and 14 herein, persons who are expressly  
7 retained or sought to be retained by a party as consultants or testifying experts, such as  
8 accountants, statisticians, economists, industry or technical experts, provided that the  
9 disclosure of Confidential Material to any persons under this subparagraph shall only  
10 be to the extent necessary to perform their work on this litigation;

11 (e) Subject to Paragraph 14 herein, any other persons who are  
12 designated to receive Confidential Material by order of this Court after notice to the  
13 parties, or by written stipulation of the parties;

14 (f) Subject to Paragraphs 13 and 14 herein, any person who gives  
15 testimony in deposition in this action;

16 (g) The Court and Court personnel;

17 (h) Subject to Paragraph 14, court reporters, interpreters and  
18 videographers employed in connection with this action;

19 (i) Individual party's insurer and insurer's employees involved in  
20 handling claims generated by this action; and

21 (j) The parties retain the right to apply to the Court for an order  
22 restricting certain individuals from access to certain information.

23 12. For the purposes of this Order, a consultant or expert shall be restricted to  
24 a person who is retained or employed as a bona fide consultant or expert for purposes  
25 of this litigation, whether full or part time, by or at the direction of counsel for a named  
26 party in this litigation, provided, however, that no Confidential Material shall be  
27 disclosed to any person who is, at the time of disclosure, an officer, director or  
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1 employee of defendants' competitors or other competitor specifically listed by  
2 defendants herein.

3 13. Each person set forth in Paragraph 11 to be examined as a witness, may be  
4 so examined during a deposition concerning any information or material designated  
5 under this Order, which that person had lawfully received or authored prior to and  
6 apart from this action. During examination, any such witness may be shown  
7 information or material designated under this Order by a party which appears on its  
8 face or from other documents or testimony to have been received or authored by that  
9 witness from, or communicated to that witness by, that same party provided that the  
10 examining party makes a reasonable effort to obtain the witness's compliance with  
11 Paragraph 9.

12 14. No disclosure of Confidential Material shall be made to any person set  
13 forth in Paragraph 11 who is not (i) outside counsel to a party to this litigation, or staff  
14 directly employed by such outside counsel, or (ii) the Court or Court personnel unless,  
15 prior to such disclosure, such person is furnished with a copy of this Order and a copy  
16 of the Certification (Exhibit A), such person reads this Order and the Certification, and  
17 such person signs the Certification. Counsel for the party seeking to disclose  
18 Confidential Material to any such person pursuant to this paragraph shall be  
19 responsible for permanently retaining, and making available, the executed originals of  
20 all such Notifications.

21 15. All Confidential Material shall be securely maintained in a manner  
22 intended to preserve confidentiality. Access to such material shall be permitted only to  
23 those designated persons set forth in Paragraph 11 above as persons properly having  
24 access thereto. The recipient of any Confidential Material shall use its best efforts, but  
25 at no time less than reasonable efforts under the circumstances, to maintain the  
26 confidentiality of such information.

27 16. Nothing contained in this Order shall affect the right of any party to make  
28 any objection, claim any privilege, or otherwise contest any request for production of



1 documents, interrogatory, request for admission, subpoena, or question at a deposition  
2 or to seek further relief or protective order from the Court as permitted by the Federal  
3 Rules of Civil Procedure. Nothing in this Order shall constitute an admission or  
4 waiver of any claim or defense by any party.

5 17. Nothing contained herein shall be deemed to create a waiver as to  
6 inadvertently-produced discovery materials that are protected from discovery on the  
7 basis of privilege or the work-product doctrine under Rule 26 of the Federal Rules of  
8 Civil Procedure. The inadvertent production of such documents does not waive any  
9 privilege or immunity with respect to such production or with respect to other materials  
10 or information referred to in the materials produced, so long as a request for the return  
11 of such documents or information is made within ten (10) Court days after the  
12 producing party learns of the inadvertent production. Within five (5) Court days of  
13 such request, the receiving party shall take reasonable efforts to return the  
14 inadvertently produced documents identified and all copies thereof, and certify in  
15 writing that it has done so. Nothing in this Paragraph shall prejudice the right of any  
16 party to seek discovery of communications, documents and things as to which a claim  
17 of privilege has been made.

18 18. The parties understand that designation of any material or document as  
19 "CONFIDENTIAL" does not entitle the parties to have those documents filed under  
20 seal and that any party seeking to file with the Court any Confidential Material or any  
21 papers containing, quoting, or describing such information, must comply with Local  
22 Rule 79-5.1.

23 19. [DELETED]

24 20. If any attorney files with or submits to the court any confidential (a)  
25 documents, responses, transcripts or things as defined by this order, or information  
26 derived there from, or (b) any affidavits, memoranda, exhibits or other papers  
27 containing or making reference to any such confidential documents, responses,  
28 transcripts or things, or any information contained therein, then such attorney shall first

1 consider whether redacting portions of such materials that contain or refer to  
2 confidential information is practical and will protect the confidential information while  
3 leaving other non-confidential information meaningful, as required by *Foltz v. State*  
4 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003). If so, redacted versions of  
5 such material shall be filed with the court according to the standard filing procedures.

6 21. A party shall not be obligated to challenge the propriety of material  
7 designated under this Order at the time the designation is made and failure to do so  
8 shall not preclude a subsequent challenge thereto. In the event that any party to this  
9 litigation disagrees at any state of these proceedings with such designation, such party  
10 shall provide to the designating person or entity a letter detailing its objection to the  
11 designation. The designating person or entity shall respond by letter within five (5)  
12 Court days to such letter. If not resolved, the objecting party may file a motion  
13 objecting to the designation. In any such motion, the burden of proving that  
14 information has been properly designated under this Order is on the person or entity  
15 making such designation. In filing any such motions all parties agree to act in  
16 compliance with the procedure set out in Federal Rules of Civil Procedure 37.

17 22. Nothing in this Order shall preclude any party to the lawsuit or its  
18 counsel: (a) from showing Confidential Material to an individual who either prepared  
19 or reviewed the document prior to the filing of this action; or (b) from disclosing or  
20 using, in any manner or for any purpose, any Confidential Material from the party's  
21 own files which the party itself has designated under this Order.

22 23. Nothing in this Order shall prevent disclosure beyond the terms of this  
23 Order if the party designating Confidential Material consents in writing to such  
24 disclosure, or if a court orders such disclosure. A party requested to disclose  
25 Confidential Material to a nonparty pursuant to a validly served subpoena, civil  
26 investigative demand, discovery procedure permitted under the Federal Rules of Civil  
27 Procedure or other formal discovery request shall object to its production to the extent  
28 permitted by applicable law and notify the requesting nonparty of the existence of this

1 Order and that the material requested by the nonparty has been designated under this  
2 Order, and, unless prohibited by law, shall further give notice of such request, by  
3 facsimile and next business day delivery, upon the party which designated the material  
4 as soon as is reasonably possible, and sufficiently prior to the date on which such  
5 confidential material is to be produced to the nonparty. Once such notice is given, the  
6 designating party shall take all steps it believes are necessary to protect the  
7 Confidential Material and the non-designating party is not required to take any further  
8 action.

9       24. If a party inadvertently fails to designate material and/or information  
10 when producing or otherwise disclosing such material and/or information, it shall not  
11 be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to  
12 the specific information disclosed or as to any other information relating thereto or on  
13 the same or related subject matter. As soon as the receiving party has knowledge of  
14 the inadvertent production, the information must be treated as if it had been designated  
15 under this Order, and the receiving party must endeavor in good faith to obtain all  
16 copies of the document which it distributed or disclosed to persons not authorized to  
17 access such information by Paragraphs 11 or 12 above, as well as any copies made by  
18 such persons. The costs of doing so shall be paid by the designating party.

19       25. All counsel for the parties who have access to Confidential Material  
20 acknowledge they are bound by this Order and submit to the jurisdiction of this Court  
21 for purposes of enforcing this Order.

22       26. Entering into, agreeing to, and/or producing or receiving information or  
23 material designated under this Order, or otherwise complying with the terms of this  
24 Order shall not:

25               (a) operate as an admission by any party that any particular information  
26 or material designated under this Order contains or reflects trade secrets, proprietary or  
27 commercially sensitive information or any other type of confidential information;  
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1 (b) operate as an admission by any party that the restrictions and  
2 procedures set forth herein constitute or do not constitute adequate protection for any  
3 particular information designated under this Order;

4 (c) prejudice in any way the rights of any party to object to the  
5 production of documents they consider not subject to discovery;

6 (d) prejudice in any way the rights of any party to object to the  
7 authenticity or admissibility into evidence of any document, testimony or other  
8 evidence subject to this Order;

9 (e) prejudice in any way the rights of any party to seek a determination  
10 by the Court whether any information or material should be subject to the terms of this  
11 Order;

12 (f) prejudice in any way the rights of any party to petition the Court for  
13 a further protective order relating to any purportedly confidential information;

14 (g) prevent the parties to this Order from agreeing in writing or on the  
15 record during a deposition or hearing in this action to alter or waive the provisions or  
16 protections provided for herein with respect to any particular information or material  
17 with written or on the record consent of the party disclosing such information.

18 27. This Order shall not be construed to apply to any information that: (a) is  
19 available to the public other than through a breach of this Order or other duty of  
20 confidentiality; (b) a receiving party can demonstrate was already known to the party at  
21 the time of disclosure and was not subject to conditions of confidentiality; or (c) a  
22 receiving party can demonstrate was developed by that party independently of any  
23 disclosure by a designating party or nonparty.

24 28. In the event that information in the possession or control of a party  
25 involves the confidentiality rights of another party or a non-party or its disclosure  
26 would violate a protective order issued in another action, the party with possession or  
27 control of the information will promptly attempt to obtain the consent of the other  
28 party or non-party to disclose the information under this Order. If the consent of the

1 non-party is refused or otherwise cannot be obtained, the party will promptly thereafter  
2 notify the party seeking discovery by the written response due date for such discovery  
3 of: (a) the existence and description (to the extent disclosable) of the information  
4 without producing such information and; (b) the identity of the other party or nonparty  
5 (provided, however, that such disclosure of the identity of the non-party does not  
6 violate any confidentiality obligations). The party seeking discovery may then make  
7 further application to the party or non-party or seek an order to compel discovery.

8         29. Within sixty (60) days after the final termination of litigation between the  
9 parties (including appeals), all Confidential Material and all copies thereof (including  
10 summaries and excerpts), except materials in the possession of Court/Court personnel,  
11 shall be either returned to the party that produced it or destroyed and a certification of  
12 destruction supplied to the producing party; provided, however, that for each party,  
13 counsel who is entitled access to such designated material pursuant to this Order may  
14 retain one complete and unredacted set of its work product that contains designated  
15 material as well as pleadings and papers filed with the Court or served on the other  
16 party solely for reference in the event of, and only in the event of, further proceedings  
17 or litigation between the parties, a dispute over such counsel's performance, or a  
18 dispute over the use or dissemination of Confidential Material. Such retained copy of  
19 pleadings and papers shall be maintained in a file accessible only by properly  
20 authorized counsel under the provisions of, and bound by, this Order.

21         30. This Order shall survive the final termination of this litigation with respect  
22 to any such retained Confidential Material and the Court shall retain jurisdiction to  
23 resolve any dispute concerning the use thereof.

24 Dated: June 29, 2010

/s/

Hon. Jacqueline Chooljian  
United States Magistrate Judge

**EXHIBIT A TO PROTECTIVE ORDER**

**UNITED STATES DISTRICT COURT  
FOR DISTRICT OF CALIFORNIA**

COUTINHO & FERROSTAAL  
INCORPORATED, a Delaware Corp.,

Plaintiff,

v.

NEXCOIL INC., a California Corp. and  
DOES 1-10, inclusive,

Defendants.

Case No. CV09-9244 GHK (JCx)

**CERTIFICATION REGARDING  
PROTECTIVE ORDER  
REGARDING CONFIDENTIAL  
INFORMATION**

**CERTIFICATION**

The undersigned hereby acknowledges that, having read the Protective Order filed in the above-captioned lawsuit, on \_\_\_\_\_, the undersigned understands the terms thereof and agrees to be bound thereby. The undersigned further agrees to submit to the jurisdiction of the Court for purposes of enforcement of the provisions of the Protective Order and understands the Court may impose sanctions for any violation of the Protective Order.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name (print):